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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D.,

Plaintiff,

vs.

ALTA BATES SUMMIT MEDICAL
CENTER,

Defendants.

Case No. C 07-2486 WHA

**PLAINTIFF'S OBJECTIONS
PURSAUNT TO RULE 26(a)(3)(B)
TO DEFENDANT'S PRETRIAL
DISCLOSURES**

**Trial Date: June 2, 2008
Dept: Ctrm. 9, 19th Floor
Judge: Hon. William H. Alsup**

Plaintiff makes the following objections pursuant to Federal Rule of Civil Procedure 26(a)(3)(B) to Defendant's Pretrial Disclosures:

**I. OBJECTIONS TO THE USE UNDER RULE 32(a) OF DEPOSTIONS
DESIGNATED BY DEFENDANT**

1. Plaintiff objects to Defendant's use at trial of the deposition of Barry Horn, M.D.
2. Plaintiff objects to Defendant's use at trial of the deposition of Bruce Reitz, M.D.

II. OBJECTIONS TO THE ADMISSIBILITY OF DOCUMENTS OR EXHIBITS DESIGNATED BY DEFENDANT

Defendant's Pretrial Disclosures were not listed numerically. For purposes of these objections, Plaintiff has assigned numbers to the objectionable exhibits. Pursuant to Rule 26(B), Plaintiff reserves additional objections under Federal Rules of Evidence 402 and 403.

| # | Description | Evidence |
|----|--|---|
| 1. | Patient care evaluation from the Card/Thor Surgery Committee to Dr. Ennix dated May 3, 1991 D 1447 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |
| 2. | Abstract from SPR committee re case discussed in D 1839 D 1840 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |
| 3. | 10/15/01 letter from Moorstein to Ennix D 1839 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |
| 4. | March 5, 2003 memo Iverson to Ennix re documentation issue. D 1786 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |
| 5. | July 23, 2003 letter to Ennix from the Quality Management Dept D 4072 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |
| 6. | June 10, 2003 memo from Iverson to Ennix re lack of documentation D 1794 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |
| 7. | July 1, 2003 Memorandum of Understanding re Exchange of Confidential Peer Review Information D 1382-1387 | If offered for the truth of the matters asserted in the document, hearsay |
| 8. | December 9, 2003 letter from John Rosenberg to Ennix forwarding the Junod report. D 4146-4150 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant |
| 9. | Junod report and forwarding memo from the Alta Bates Medical Staff President D 1847-1852 | If offered for the truth of the matters asserted in the document, hearsay |

| # | Description | Evidence |
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| 10. | April 12, 2004 Surgery Peer Review Committee minutes D 4195-4201 | If offered for the truth of the matters asserted in the document, hearsay |
| 11. | April 13, 2004 MEC Executive Session Minutes D 4206 | If offered for the truth of the matters asserted in the document, hearsay |
| 12. | April 15, 2004 letter from Rosenberg to Isenberg re status of Alta Bates review D 1854-1855 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant |
| 13. | April 21, 2004 letter from Isenberg to Ennix D 4209-4210 | If offered for the truth of the matters asserted in the document, hearsay |
| 14. | April 28, 2004 Isenberg letter to Ennix D 4212-4213 | If offered for the truth of the matters asserted in the document, hearsay |
| 15. | May 5, 2004 Medical Staff Report to the Board of Trustees D 4214 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant |
| 16. | July 22, 2004 letter from Isenberg to Ennix D 1760-1761 | If offered for the truth of the matters asserted in the document, hearsay |
| 17. | August 10, 2004 MEC Executive Session Minutes D 3322 | If offered for the truth of the matters asserted in the document, hearsay |
| 18. | August 13, 2004 AHC Minutes D 1860 | If offered for the truth of the matters asserted in the document, hearsay; if offered in redacted format, Court needs to review redactions to determine if the passages are privileged |
| 19. | August 24, 2004 letter from Paxton to Ennix Re Ad Hoc Committee investigation D 1863 | If offered for the truth of the matters asserted in the document, hearsay |
| 20. | August 30, 2004 AHC Minutes D 1861-1862 | If offered for the truth of the matters asserted in the document, |

| # | Description | Evidence |
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| | | hearsay |
| 21. | September 20, 2004 AHC Minutes D 1864-1866 | If offered for the truth of the matters asserted in the document, hearsay |
| 22. | September 27, 2004 AHC Minutes D 1881-1884 | If offered for the truth of the matters asserted in the document, hearsay |
| 23. | October 4, 2004 AHC Minutes D 1886-1888, D 4312 | If offered for the truth of the matters asserted in the document, hearsay |
| 24. | October 11, 2004 AHC Minutes D 1895-1897 | If offered for the truth of the matters asserted in the document, hearsay |
| 25. | October 25, 2004 AHC Minutes D 4318-4319 | If offered for the truth of the matters asserted in the document, hearsay |
| 26. | October 27, 2004 AHC Minutes D 1910-1912 | If offered for the truth of the matters asserted in the document, hearsay |
| 27. | October 28, 2004 AHC Minutes D 1918-1923 | If offered for the truth of the matters asserted in the document, hearsay |
| 28. | January 4, 2005 letter from Paxton and Isenberg to Smithline w/enclosures. D 2558-2564 | If offered for the truth of the matters asserted in the document, hearsay |
| 29. | March 8, 2005 MEC Executive Session Minutes D 3321 | If offered for the truth of the matters asserted in the document, hearsay |
| 30. | May 10, 2005 Special Meeting D1997-1998 | If offered for the truth of the matters asserted in the document, hearsay |
| 31. | Excerpts from Patient's file D 2397-2444 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |

| # | Description | Evidence |
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| 32. | May 18, 2005 MEC Executive Session Minutes D 2502-2506 | If offered for the truth of the matters asserted in the document, hearsay |
| 33. | May 19, 2005 AHC Minutes D 2194-2195 | If offered for the truth of the matters asserted in the document, hearsay |
| 34. | May 19, 2005 letter from Isenberg to Ennix D 2507-2508 | If offered for the truth of the matters asserted in the document, hearsay |
| 35. | May 25, 2005 suspension notice for delinquent medical records D 2214 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant |
| 36. | May 27, 2005 AHC Minutes D 2197-2201 | If offered for the truth of the matters asserted in the document, hearsay |
| 37. | May 31, 2005 letter to Ennix from Paxton re AHC investigation D 2255-2258 | If offered for the truth of the matters asserted in the document, hearsay |
| 38. | June 6, 2005 MEC Executive Session Minutes D 4630 | If offered for the truth of the matters asserted in the document, hearsay |
| 39. | June 14, 2005 MEC Executive Session Minutes D 4637 | If offered for the truth of the matters asserted in the document, hearsay |
| 40. | June 24, 2005 AHC Minutes D 2381 | If offered for the truth of the matters asserted in the document, hearsay |
| 41. | June 29, 2005 AHC Minutes D 2382-2384 | If offered for the truth of the matters asserted in the document, hearsay |
| 42. | July 7, 2005 AHC Minutes D2385-2388 | If offered for the truth of the matters asserted in the document, hearsay |
| 43. | July 27, 2005 AHC Minutes D 2389 | If offered for the truth of the matters asserted in the document, |

| # | Description | Evidence |
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| | | hearsay |
| 44. | August 1, 2005 AHC Report to the MEC with attached Appendices A, B and B 2 (the NMA Report, Tabular STS Data Submitted by Dr. Ennix and a Graph Prepared re such data). D 2933-2999 | If offered for the truth of the matters asserted in the document, hearsay |
| 45. | August 15, 2005 MEC Executive Session Minutes D 2928-2930 | If offered for the truth of the matters asserted in the document, hearsay |
| 46. | September 7, 2005 MEC Executive Session Minutes D 3003 | If offered for the truth of the matters asserted in the document, hearsay |
| 47. | September 9, 2005 letter from Isenberg to Ennix | If offered for the truth of the matters asserted in the document, hearsay |
| 48. | October 11, 2005 MEC Executive Session Minutes D 3264 | If offered for the truth of the matters asserted in the document, hearsay |
| 49. | October 11, 2005 letter from Isenberg to Ennix D 4707-4715 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant |
| 50. | October 25, 2005 letter from Isenberg to Ennix D 4734-4735 | If offered for the truth of the matters asserted in the document, hearsay |
| 51. | November 2, 2005 Medical Staff Report to the Board of Trustees D 4745 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant |
| 52. | November 8, 2005 MEC Executive Session Minutes D 3267 | If offered for the truth of the matters asserted in the document, hearsay |
| 53. | December 13, 2005 MEC Executive Session Minutes D 4755-4756 | If offered for the truth of the matters asserted in the document, hearsay |
| 54. | December 30, 2005 letter from | If offered for the truth of the |

| # | Description | Evidence |
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| | Isenberg to Ennix re Summary Restriction D 2901-2902 | matters asserted in the document, hearsay |
| 55. | January 6, 2006 letter from Isenberg to Ennix D 2884 | If offered for the truth of the matters asserted in the document, hearsay |
| 56. | March 14, 2006 letter Herskowitz to Ennix D 4780 | If offered for the truth of the matters asserted in the document, hearsay |
| 57. | May 4, 2006 AHC Report to the MEC D 3274 | If offered for the truth of the matters asserted in the document, hearsay |
| 58. | May 9, 2006 MEC Executive Session Minutes D 3272--3273 | If offered for the truth of the matters asserted in the document, hearsay |
| 59. | May 10, 2006 letter from Herskowitz to Ennix D 2877-2878 | If offered for the truth of the matters asserted in the document, hearsay |
| 60. | July 10, 2006 Memo from AHC to Herskowitz D 3277-3309 | If offered for the truth of the matters asserted in the document, hearsay |
| 61. | July 11, 2006 MEC Executive Session Minutes D 3276 | If offered for the truth of the matters asserted in the document, hearsay |
| 62. | July 11, 2006 letter from Herskowitz to Ennix D 3311-3312 | If offered for the truth of the matters asserted in the document, hearsay |
| 63. | August 2, 2006 Medical Staff report to the Board of Trustees D 4837 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant |
| 64. | The California Report on Coronary Artery Bypass Graft Surgery 2000 to 2002 dated February 2005, by Judicial Notice. | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant because of the time frame at issue |
| 65. | Medical Director Loan Out and Coverage Agreement dated 9/21/01. | Irrelevant. |

| # | Description | Evidence |
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| | E002697-002717. | |
| 66. | Exhibit A to ABSMC's Responses to Plaintiff's Special Interrogatories, Set One (also Exhibit F to Hernaez Declaration in Support of Defendant's Motion for Summary Judgment). | If offered for the truth of the matters asserted in the document, hearsay |
| 67. | Material from the Peer Review file of Physician C D 5416-5474 | If offered for the truth of the matters asserted in the document, hearsay |
| 68. | Material from Peer Review file of Physician E D 5497-5500, 5511, 5513, 5514, 5522-5527, 5528-5529, 5542-5543 | If offered for the truth of the matters asserted in the document, hearsay |
| 69. | Material from the Peer Review file of Physician F D 5597-5602 | If offered for the truth of the matters asserted in the document, hearsay |
| 70. | Material from the Peer Review file of Physician G D 5678-5681, 5652-5654, 5657, 5676-5677 | If offered for the truth of the matters asserted in the document, hearsay |
| 71. | Material from the Peer Review file of Physician H D 5721-5722, D 5735-5740, D 5752-5757, 5773-5801 (also from E's file, see D 5528) | If offered for the truth of the matters asserted in the document, hearsay |
| 72. | Material from the Peer Review file of Physician I D 5906-5984, 5985, 5986 | If offered for the truth of the matters asserted in the document, hearsay |
| 73. | Material from the Peer Review file of Physician J D 6010, 6012-6013, 6014-6015, 6018-6022 | If offered for the truth of the matters asserted in the document, hearsay |
| 74. | Material from the Peer Review file of Physician L D 6085-6091 | If offered for the truth of the matters asserted in the document, hearsay |
| 75. | Material from the Peer Review file of Physician O D 6153-6169, 6170-6201, 6202-6208, 6210-6213 | If offered for the truth of the matters asserted in the document, hearsay |

| # | Description | Evidence |
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| 76. | Ware Expert Reports | Subject of Plaintiff's MIL No. 3; Irrelevant; Inadmissible expert opinion |
| 77. | Caldwell Expert Report | If offered for the truth of the matters asserted in the document, hearsay |
| 78. | J. Donald Hill Ennix Quality Assurance Report E002889-EO2898. | If offered for the truth of the matters asserted in the document, hearsay |
| 79. | Anesthesia Subcommittee Minutes Alta Bates Medical Center D 3873-3875 | Subject of Nos. 1 and 7; if offered for the truth of the matters asserted in the document, hearsay |
| 80. | Cardiac Surgery Peer Review Panel Re MD B0280 D 4156-4187 | Subject of MIL Nos. 1 and 7; irrelevant; if offered for the truth of the matters asserted in the document, hearsay |
| 81. | Charts developed or reviewed by William Isenberg in his review of Ennix's patient care issues. D 1536-1545, D 1908, D 1843-1846, D 1900-1903, D 4023 | Lack of foundation; inadmissible expert opinion; irrelevant |

Exhibits Defendant Will Present At Trial If The Need Arises.

| # | Description | Evidence |
|-----|---|---|
| 82. | February 9, 2004 S. Stanten notes re MIV procedures D 4152 | If offered for the truth of the matters asserted in the document, hearsay |
| 83. | February 9, 2004 Special Meeting Minutes D 1739-1741 | If offered for the truth of the matters asserted in the document, hearsay |
| 84. | February 24, 2004 Isenberg note re review of MIV procedures | If offered for the truth of the matters asserted in the document, hearsay |
| 85. | April 16, 2004 Special Meeting Minutes D 1742-1744 | If offered for the truth of the matters asserted in the document, hearsay |
| 86. | April 26, 2004 Special Meeting Minutes D 1746-1748 | If offered for the truth of the matters asserted in the document, hearsay |

| # | Description | Evidence |
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| 87. | Excerpt from June 14, 2004 SPRC meeting, D 4222-4223 | If offered for the truth of the matters asserted in the document, hearsay |
| 88. | July 8, 2004 Special Meeting Minutes D 1756-1757 | If offered for the truth of the matters asserted in the document, hearsay |
| 89. | August 9, 2004 SPRC meeting minutes excerpt D 4256 and 4258 | If offered for the truth of the matters asserted in the document, hearsay |
| 90. | September 14, 2004 Gomez e-mail to Jellin re Request from AHC with attached documents D 1867-1872 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant; lack of foundation |
| 91. | October 15, 2004 Note by James Lovin D 4317 | Subject of MIL No. 5; if offered for the truth of the matters asserted in the document, hearsay |
| 92. | February 22, 2005 letter from Isenberg to Ennix D 4498-4499 | If offered for the truth of the matters asserted in the document, hearsay; irrelevant |
| 93. | February 22, 2005 memo from Isenberg to MEC members D 4500 | If offered for the truth of the matters asserted in the document, hearsay |
| 94. | OR note dated 3/23/05 D 2498-2499 | Subject of Plaintiff's MIL No. 1 (unrelated peer review materials); Irrelevant because of the time frame at issue |
| 95. | March 29, 2005 Medical Staff Officers Meeting D 1984 | If offered for the truth of the matters asserted in the document, hearsay |
| 96. | April 12, 2005 Special Meeting Minutes D 1994-1995 | If offered for the truth of the matters asserted in the document, hearsay |
| 97. | May 12, 2005 Confidential Note to File of Coyness Ennix, M.D. D 1999 | If offered for the truth of the matters asserted in the document, hearsay |
| 98. | 5/13/05 Confidential Note to file of Coyness Ennix, M.D. D 2000 | If offered for the truth of the matters asserted in the document, hearsay |
| 99. | Confidential memo for peer review file by S. Stanten D 2001 | If offered for the truth of the matters asserted in the document, hearsay |
| 100. | August 9, 2005 letter from | If offered for the truth of the matters |

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| | Etchevers to Shulman D 3000-3002 | asserted in the document, hearsay; irrelevant |
| 101. | MEC subcommittee meeting minutes D 5113 | If offered for the truth of the matters asserted in the document, hearsay |
| 102. | September 22, 2005 CE/MEC subcommittee notes D 5083-5084 | If offered for the truth of the matters asserted in the document, hearsay |
| 103. | Duncan Expert Report | If offered for the truth of the matters asserted in the document, hearsay |
| 104. | Medical Board Proceedings involving Balkissoon Exhibit 2 to Defendant's Request for Judicial Notice | If offered for the truth of the matters asserted in the document, hearsay |
| 105. | Medical Board Proceedings involving Grewal Exhibit 1 to Defendant's Reply Request for Judicial Notice | If offered for the truth of the matters asserted in the document, hearsay |
| 106. | Email from Smithline to Isenberg and Weaver emails re draft report including R & R's – April 29, 2005 through May 2, 2005 NMA 01392-1393 | If offered for the truth of the matters asserted in the document, hearsay |
| 107. | Email from Shulman to Isenberg and Smithline May 2, 2005 re draft report re ABS-006 NMA 01394 | If offered for the truth of the matters asserted in the document, hearsay |
| | From Medical Record 1205056 | |
| 108. | Surgeon's OR reports NMA 06747-48, NMA 06749-50 | If offered for the truth of the matters asserted in the document, hearsay |
| 109. | Doctor's Progress Notes NMA 06786-06790 | If offered for the truth of the matters asserted in the document, hearsay |
| 110. | Patient Consents NMA 07239, NMA 07240 | If offered for the truth of the matters asserted in the document, hearsay |
| 111. | Intraoperative Nursing Records NMA 06766-06771 | If offered for the truth of the matters asserted in the document, hearsay |

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| | From Medical Record 1282678 | |
| 112. | History & Physical NMA 07255 | If offered for the truth of the matters asserted in the document, hearsay |
| 113. | Surgeon's OR report NMA 07266-07267 | If offered for the truth of the matters asserted in the document, hearsay |
| 114. | Intraoperative Nursing Record NMA 07271-72 | If offered for the truth of the matters asserted in the document, hearsay |
| 115. | Patient Consent NMA 07561 | If offered for the truth of the matters asserted in the document, hearsay |
| | From Medical Record 1282803 | |
| 116. | History and Physical NMA 07569-70 | If offered for the truth of the matters asserted in the document, hearsay |
| 117. | Discharge Summary NMA 07571-72 | If offered for the truth of the matters asserted in the document, hearsay |
| 118. | Surgeon's OR report NMA 07589-90 | If offered for the truth of the matters asserted in the document, hearsay |
| 119. | Intraoperative Report NMA 07596-98 | If offered for the truth of the matters asserted in the document, hearsay |
| 120. | Patient Consent NMA 07964 | If offered for the truth of the matters asserted in the document, hearsay |
| | From Medical Record 1283240 | |
| 121. | History & Physical NMA 07978-79 | If offered for the truth of the matters asserted in the document, hearsay |
| 122. | Surgeon's OR report NMA 07986-87 | If offered for the truth of the matters asserted in the document, hearsay |
| 123. | Intraoperative Nursing Record NMA 07991-93 | If offered for the truth of the matters asserted in the document, hearsay |
| 124. | Patient Consent NMA 08230 | If offered for the truth of the matters asserted in the document, hearsay |
| | From Medical Record 1296513 | |
| 125. | Surgeon's OR reports NMA 09387-92 | If offered for the truth of the matters asserted in the document, hearsay |

| # | Description | Evidence |
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| 126. | Intraoperative Nursing Record NMA 09398-400 | If offered for the truth of the matters asserted in the document, hearsay |
| 127. | From Medical Record 1124908 | |
| 128. | Discharge Summary NMA 10965-66 | If offered for the truth of the matters asserted in the document, hearsay |
| 129. | Surgeon's OR Reports NMA 10990-94 | If offered for the truth of the matters asserted in the document, hearsay |
| 130. | Progress Notes NMA 10999- 11012 | If offered for the truth of the matters asserted in the document, hearsay |
| 131. | Intraoperative Nursing Notes NMA 10976-81 | If offered for the truth of the matters asserted in the document, hearsay |
| 132. | Anesthesia Record NMA 10982-10985 | If offered for the truth of the matters asserted in the document, hearsay |
| 133. | Code Blue Record NMA 11110 | If offered for the truth of the matters asserted in the document, hearsay |
| 134. | Critical Care Flowsheet NMA 11148 | If offered for the truth of the matters asserted in the document, hearsay |
| 135. | From Medical Record 1281866 | |
| 136. | Surgeon's OR Report NMA 8424-8425 | If offered for the truth of the matters asserted in the document, hearsay |
| 137. | Perfusionist record NMA 08446 | If offered for the truth of the matters asserted in the document, hearsay |
| 138. | Intraoperative Nursing Report NMA 8435-8437 | If offered for the truth of the matters asserted in the document, hearsay |
| 139. | Plaintiff's Response to Defendant's Special Interrogatory, Set No. 1 (unrelated peer review materials) dated October 4, 2007 | Incoherent in that nothing in the designated document address "unrelated peer review materials"; irrelevant |
| 140. | Plaintiff's Supplemental Response to Defendant's Special Interrogatory, Set No. 1 | Incoherent in that nothing in the designated document address "unrelated peer review materials"; |

| # | Description | Evidence |
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| | (unrelated peer review materials) dated October 17, 2007 | irrelevant |

Respectfully submitted,

Dated: May 19, 2008

MOSCONE, EMBLIDGE & QUADRA, LLP

By: _____/s/
Rachel J. Sater

Attorneys for Plaintiff